
(2025) 02 DEL CK 1103

In the Delhi High Court

Case No : Writ Petition (C) No. 1635 Of 2025 & Civil Miscellaneous Petition No. 7966 Of 2025

Rashid Proprietor Of Ms Enterprises

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 11-02-2025

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2025) 02 DEL CK 1103

Hon'ble Judges : Prathiba M. Singh, J; Dharmesh Sharma, J

Bench : Division Bench

Advocate : Dipak Raj, Kuldeep Mishra, Garima Kumar, Deep Raj, Ayushman, Piyush Beriwal, Sandip Munian, Jyotsna Vyas

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India seeking quashing of the Show Cause Notice [hereinafter "SCN"] dated 24th November, 2023 and the subsequent cancellation of the GST registration of the Petitioner dated 7th December, 2023.

3. This is the second round of SCNs being issued to the Petitioner. In the first round, a SCN was issued on 18th August, 2023, wherein the ground raised was as under:

"Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

1. OTHER STATE REFERENCE VIDE LETTER DATED 08-08-2023 REGARDING SUSPICIOUS PURCHASE."

4. In the above SCN, the Petitioner was given a date for appearance on 29th August, 2023 at 11:30 AM. Pursuant to the SCN, the Petitioner is said to have filed a reply on 21st August, 2023 based on which the Respondent No. 3/ Department had dropped the proceedings against the Petitioner vide order dated 22nd August, 2023.

5. Thereafter, a second SCN i.e., the impugned SCN was issued on 24th November, 2023. This time the reasons/grounds raised are as under:

"1. Rule 21 (a) -person does not conduct any business from declared place of business.

2. As per AC(AE), CGST Delhi East letter no.5312 dated 22-11-2023, firm was involved in passing on of inadmissible ITC without actual supply of goods and services."

In this SCN, however, no date for hearing has been fixed. The Petitioner was directed to file a reply to the said SCN.

6. The case of the Petitioner is that he filed a reply stating that it is not a fake firm and the address exists. The said reply reads as under:

"Dear Sir, This is not the fake firm. The firm address is exist. Please re-visit my firm address. This is not the fake firm. I am not availing the fake ITC."

7. However, vide order dated 7th December, 2023 the Respondent No. 3/ Department cancelled the registration of the Petitioner. The Petitioner then preferred an application for revoking the cancellation on 16th January, 2024. The said application seeking revocation of the cancellation was also rejected on 19th December, 2024. Hence, the present petition.

8. The two grounds urged by the Petitioner are that -

(i) there are no reasons given in the SCN from which it can be deciphered as to what is the reason why the registration is sought to be cancelled;

(ii) the CGST Delhi East letter No. 5312 dated 22nd November, 2023 which the Respondent No. 3/Department relies on in the impugned SCN was also not served upon the Petitioner.

9. The Id. Counsel for the Petitioner submits that a two-line reply was filed by the Petitioner, but the same has not been considered. Lastly, it is submitted that no date or time for a personal hearing was mentioned in the impugned SCN and neither was any hearing fixed subsequently. Thus, the entire procedure that has been adopted is violative of the Principles of Natural Justice.

10. The Id. Counsel appearing for the Respondent No. 3 submits that the reply was not filed by the Petitioner, hence, the hearing may not have been fixed by the Respondent No. 3/Department.

11. Heard. The Court has considered the matter. The impugned SCN itself is

completely cryptic and raises two grounds for cancellation. Firstly, that the firm is not conducting any business from the declared place of business. This is contrary to the physical verification report dated 22nd August, 2023 (Annexure A.6), provided by the GST inspector in terms of the Rule 25 of the CGST Rules, 2017. The said report clearly records that at the time of the physical verification, the Petitioner himself was present and he was dealing in scrap material and the firm was also found functioning. The said report is set out below:

"10. Comments- at the time of visit the proprietor of the Firm Himself was present. It deals in trading of Scrap. It is found functioning during Visit."

Thus, the first ground of the SCN is not sustainable, unless there is credible information to dislodge the findings in the earlier inspection report.

12. Secondly, the allegation is that the firm is involved in passing off inadmissible ITC without actual supply of goods and services. However the letter dated 22nd November, 2023 based on which the said allegation is raised has not been furnished to the Petitioner.

13. The Petitioner has neither been given the proper material nor has a hearing been given. The cancellation of GST registration can have adverse consequences on the Petitioner who would find it challenging to conduct his business. The show cause notice is completely cryptic. Under these circumstances, it is deemed appropriate to direct as under:

(i) Let the letter dated 22nd November, 2023 mentioned in the impugned SCN be furnished to the Petitioner within four weeks.

(ii) Let the Petitioner be given an opportunity to file a detailed reply before the concerned Department within four weeks thereafter.

(iii) A personal hearing shall be granted to the Petitioner and an order in accordance with law shall thereafter be passed.

14. The cancellation order dated 7th December, 2023 is accordingly quashed and set aside. Upon an order being passed by the department, all rights and remedies of the Petitioner are left open.

15. The writ petition is disposed of in the above terms. Pending applications, if any, are also disposed of.